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To: Medical Cannabis Policy Advisory Board

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Subject: Strategies to address medical cannabis product availability concerns

Introduction

The board may answer the following questions as it considers making a recommendation to address medical cannabis product availability concerns. Specifically, the board may consider recommending to allow a patient to request a specific product from a processor be made available for pickup or purchase at a medical cannabis pharmacy.

1. Should lawmakers amend statute to allow patients to formally request that a certain product manufactured by a processor be made available for pick up at a medical cannabis pharmacy?
2. If yes to (1), where should the order be submitted online?
 - a. A medical cannabis pharmacy website?
 - b. A medical cannabis processor website?
 - c. A state-run website?
3. When a patient submits an online request for a processor's product, should the processor be able to drop off the order at any pharmacy a patient requests? Can a pharmacy charge a holding fee?
4. Could pharmacies or processors require a minimum number of units in the order?
5. Should any product be eligible for a product request?
6. Alternatively, should the board recommend that additional medical cannabis pharmacy licenses be issued after the annual market analysis to determine if more pharmacies are needed is completed?

7. Alternatively, should the board recommend that the law mandate all medical cannabis pharmacies to carry a minimum amount of all their competitor's products?

Background

The board's interest in considering the ability for a patient to request specific products from processors as an agenda item arose from board meeting conversation regarding medical cannabis processor delivery on October 17, 2023. An [alternative proposal](#) considered recommending the following: "Allow patients to 'request' certain products, attached to their patient ID or name, in a small batch order, to be sent on their behalf to a participating pharmacy of their choice for delivery or pickup."

Generally, the idea is that a participating pharmacy or processor would be able to solicit or receive a product request from a patient. The processor would deliver the order to a pharmacy for the patient and the pharmacy would store the product for the patient until pickup or delivery.

This proposal has a number of potential avenues for implementation. Major questions center around whose website should receive the order, pricing and payment, and if pharmacies should be obligated to receive and hold a patient product request from any processor. Input from all 14 processor companies and representatives of 12 pharmacies was incorporated into this memorandum.

How often is a patient unable to consistently find the product they need at a medical cannabis pharmacy?

Some processors sought to understand how many patients are having difficulty accessing their preferred products at their nearest pharmacy or through home delivery. Is permitting patients to order products via a request is a reasonable remedy to this problem? DHHS and UDAF complaint logs revealed that some

patients have concerns regarding product access over the past 2 years, although there are limitations to measuring patient sentiment through regulatory channels. Only a select group chooses to file a complaint. Nonetheless, patient concerns were:

- certain pharmacies do not carry certain strains.
- lack of options and/or consistent out-of-stock issues.
- formulas being changed for a product a patient prefers.

Results from the [DHHS 2022 medical cannabis market analysis survey](#), which received 8,901 responses from participants in the state's medical cannabis program, can provide more insight. The survey was conducted in November 2022.

- To the question, "The Utah cannabis pharmacies consistently have the product(s) that I need."
 - **27% disagreed – 61% agreed** – 12% were undecided.
- To the question, "The Utah cannabis pharmacies have a good variety of available products."
 - **25% disagreed – 57% agreed** – 17% were undecided.

Although the survey had its limitations, the results indicate that around ¼ of patients were not satisfied with 2022 market product availability and variety.

Are patient product requests already happening?

Some patients request specific products from certain pharmacies or contact processors to inquire about specific products. 2 processors reported that they already receive and try to accommodate special requests from patients, either for an existing product or for a new formulation. In these cases, a processor coordinates with a medical cannabis pharmacy for the delivery of a particular product from the processor to the pharmacy, a wholesale price is determined, and the patient pays a retail price for the product when they come to pick it up from the pharmacy. Product requests are happening, but in an informal manner. Medical

cannabis pharmacies and processors are not required to accommodate special requests and some licensees choose not to do them. There are anecdotal reports of unfulfilled promises and rejections of special requests.

Analysis

Do processors support the idea of a processor-run patient product request system?

Processors were equally split on whether a processor should be able to receive and transact a patient product request. 3 entities could theoretically receive the order: a processor themselves, a medical cannabis pharmacy, or a state-run patient portal. Should an order come through a processor or state-run system, 1 proposal is to obligate a pharmacy to fulfill the order on behalf of the processor. Thoughts on these 3 proposals are below.

1. Processor-run patient product request system

Arguments for

- a. **Straight to the source – no pharmacy gatekeeping.** Those for processor control of patient product requests felt that a processor listing available products for request and receiving the order would be easiest for patients, as the patient would go straight to the source of the product they desire.
- b. **Processors are in a better position to assist patients with their products.** Some of these processors feared that if a processor couldn't receive a product request order, patients would have to order products from a pharmacy which may not properly explain the product or have a financial interest in selling another product.
- c. **Pharmacies aren't fulfilling product requests now.** There was concern that leaving the right to conduct a product request with a pharmacy wouldn't change anything for patients who can't access certain products or processors

who argue they are being denied shelf space at pharmacies. It was expressed that pharmacies have little incentive to fulfill product requests, particularly if a certain pharmacy doesn't have a business relationship with a certain processor. If a processor can facilitate a patient product request order, that processor doesn't have to rely on a pharmacy's will to fulfill the order.

Arguments against

- a. **Pharmacies are better equipped to help patients with selection.** Those against felt processors shouldn't be facilitating any orders with patients. This was seen as a way to bypass pharmacies, which are required to have pharmacists and have additional costs as a patient-facing business.
- b. **Processors could market patients away from pharmacies.** If a processor aggressively markets their ability to conduct patient product request orders, patients may stop purchasing from pharmacies. At the extreme, a processor could disparage pharmacies and attempt to convince patients to only interact with processors.
- c. **Pricing and discounts will influence patient choice.** Those against were universally concerned with pricing and payment. If a processor is paid by the patient and delivers the order to a medical cannabis pharmacy, would the pharmacy be able to charge a holding fee? Who would charge the universal transaction fee? What if a processor offers their products and a pharmacy delivery fee at a lower cost than the retail price? Could patients use this system for any product, or just products that are not available from other pharmacies?

2. Pharmacy-run patient product request system

Arguments for

- a. **Pharmacies conduct transactions - why allow production establishments to do so?** Those for pharmacy control of patient product requests supported keeping all transactions at the pharmacy level, where

they're currently conducted. Allowing a separate kind of licensee to conduct transactions could significantly change the structure of the medical cannabis program.

- b. **Pharmacies already interact with patients, verify orders, and are responsible for helping patients find products.** Pharmacies already conduct all transactions with patients and must verify any order doesn't conflict with a qualified medical provider's recommendation. Those in favor of pharmacy control believed pharmacists are the best avenue for resolving patient product needs. Some asked how independent processors would do this without a pharmacist, and if processors would convince patients to buy from their business rather than a pharmacy.

Arguments against

- a. **Pharmacies will keep the status quo – some processors won't get their products on shelves and some patients won't be able to access them.** If the board recommends that pharmacies conduct product request orders, there would be no change to statute or rule.
- b. **Pharmacies aren't likely to participate and would steer patients towards in-stock products.** Processors against allowing pharmacies to conduct patient product requests felt that some pharmacies wouldn't participate and others would push certain products for requests while undermining other products.

3. State-run patient product request system

Arguments against

- a. **The state shouldn't obligate licensees to work together.** The majority of processors didn't believe a pharmacy should be required by law to accept, hold, and dispense any product request order as a condition of their license.
- b. **The software will be difficult for the state to manage.** There was concern as to how the state would accurately post online products available for

requests, how the order would be paid for up-front, and having an additional state-controlled part of the state's medical cannabis software in the market.

- c. **Concern about artificial market manipulation.** A few processors felt that this proposal is an attempt by some to be "bailed out" by the state. The law should let the existing market determine what products are or aren't available for purchase by patients.

Arguments for

- a. **This would be in the best interest of the patient, not businesses.**
Processors in support of a state-run system believed it would encourage pharmacies to stock a larger variety of products and compel licensees to work together for the sake of a patient needing a specific product, should the pharmacy not stock it or refuse to obtain it.
- b. **Patient access is subject to business relationships.** As a third party, the state could fill a patient need gap that licensees aren't. A few processors were frustrated that they have no recourse when pharmacies refuse to carry their products for patients who desire them. Should the state facilitate product requests, it would also be privy to which licensees refuse to carry out these requests.

Should pharmacies be required to receive and dispense patient product request orders?

The majority of processors didn't believe a pharmacy should have a legal obligation to receive and dispense a product that a patient has requested from a processor. Reasons for this include dispensing a product the pharmacy doesn't endorse, charging the patient a holding fee, and requiring licensees to work with other licensees they don't have a relationship with. 3 processors explicitly supported the idea of requiring pharmacies to receive and dispense any product request order, arguing that pharmacies shouldn't choose what access patients have to products.

What products should be eligible for request?

If patients are permitted to make product requests, what kinds of products should be eligible? A fundamental argument for the idea of product requests is that a group of patients exist that aren't able to access products they desire or depend on, such as a niche tincture, balm, or strain. What if a patient wants to order a more typical product and is adamant about receiving that product? If a processor is the entity taking orders, could a patient buy products at or around wholesale price and be incentivized to stop buying from pharmacies? A few processors felt that this may become a form of processor delivery.

The board should consider if only certain kinds of products should be eligible for patient product requests or if a patient should be able to request any product in any legal amount.

What's the price tag?

Product requests will likely be prohibitively expensive for most patients. Delivery of a small quantity of units from a processor to a medical cannabis pharmacy can be costly. 1 or 2 medical cannabis products driven from a processor to a pharmacy may be quick and cost-effective in some instances, such as a pharmacy and processor co-located in Salt Lake County, but [processors operate across 8 counties](#). Should a patient want a product from a Box Elder County processor at a Salt Lake County pharmacy, the processor will likely need to charge over \$100 to cover their delivery expenses. 3 potentials were mentioned by processors in order to reduce the end price to a patient:

- 1. Ship product request orders with regularly scheduled processor shipments.** Since shipping a single or a few products would have higher cost, product request orders could be shipped with normal processor shipments. This would mean patients may have to wait a week or more to receive the product, but at a more reasonable cost.

2. **State-operated patient product request order transfer.** 2 processors expressed support for the state hiring a vendor to deliver product request orders between processors and pharmacies. 1 of these processors believed the product could be delivered straight to a patient, but this would require the state to hire a pharmacist to verify orders. In addition, some processors viewed this as a state-subsidized form of processor delivery.
3. **Require multi-unit orders.** In order to reduce cost, a few processors believed whether a processor or pharmacy receives the order, the licensee is within their rights to require a minimum number of units.

Other alternatives

Processor conversations yielded 3 more proposals that may assist in the original problem: patient access. These 3 ideas haven't been presented to all processors, as they came up in various conversations throughout the engagement process.

- **More medical cannabis pharmacies.** 5 processors suggested UDAF issue more medical cannabis pharmacy licenses as a remedy to the patient access problem. The board could recommend that independent processors be given exclusive opportunity to apply for one or more additional medical cannabis pharmacy license(s), or receive additional scoring as an independent processor in the request for proposal process. However, this may face legal scrutiny, and the law must clarify that regardless of ownership changes, the pharmacy cannot join a vertically integrated company. Additionally, 1 processor thought that additional pharmacy licenses could be mandated by law to carry an equal amount of every processor's products.
- **Minimum shelf-space requirements.** With precedent in other states, at least 2 processors supported this concept. Minimum shelf-space laws require a cannabis retailer to reserve a certain amount of their inventory for competing products or products from a specific group, such as independent processors or products produced by a processor engaged in a social equity

program. Should the board want to explore this concept, it could be agendized for a future meeting.

Options

Should the board want to approve a recommendation regarding strategies to address medical cannabis product availability concerns, here are possible options:

1. Patient product request options

- a. Pharmacy voluntary patient product request (status quo).
- b. Processor patient product request.
- c. State patient product request.

2. Issue additional medical cannabis pharmacy licenses after UDAF market analysis

- a. Additional licenses without conditions.
- b. Additional licenses with condition of never having ownership connection with a Utah-licensed cultivator.
- c. Additional licenses with RFP awarding additional points for being an existing Utah independent processor (without a cultivation license) or where licensee is obligated to a minimum shelf-space mandate.

3. Medical cannabis pharmacy minimum shelf-space mandate